

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4128 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

BHUPENDRABHAI CHATURBHAI PATEL

Versus

DINESHBHAI MANIBHAI PATEL

Appearance:

MR HARIN P RAVAL for Petitioners

MR ARUN H MEHTA for Respondent No. 1

MR MUKESH PATEL, ld.AGP for respondent no.3.

MR RA MISHRA for Respondent No. 4, 5

No one appears on behalf of respondent no.2 despite
service.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 07/07/1999

ORAL JUDGEMENT

The respondent no.1 represented through Mr.Arun Mehta, was working as elected Sarpanch of Gram Panchayat of Vasad and the present petitioners are elected members of the Panchayat. The respondent no.1 was removed from the office of the Sarpanch of the said Gram Panchayat on 27th March 1999 by the District Development Officer, respondent no.4. Against this order dated 27th March

1999, the respondent no.1 preferred an appeal before the Additional Development Commissioner. The additional Development Commissioner, on 5th April 1999, while entertaining the appeal, issued notice to the present petitioners as they had filed some caveat and on the very same day i.e. 5.4.1999, the Additional Development Commissioner admitted the appeal and also passed an interim order to maintain status-quo till 12th April 1999 in favour of the present respondent no.1 and the hearing was also fixed on 12th April 1999. The hearing could not take place on 12th April 1999 and the matter was adjourned to 17th May 1999 without extending the interim order. It was again adjourned to 19th May 1999 without extending the interim order. On 17th May 1999, the present petitioners had also moved an application that they may be joined as party and they may be heard before passing any further orders. On 19th May 1999, the matter was heard on the question of granting interim relief to the respondent no.1 and also on the question of joining the present petitioners as party in this appeal. The order was passed on 24th May 1999 rejecting the application of the petitioners for being joined as party and granting the interim order in favour of the respondent no.1. On the basis of this order dated 24th May 1999, the respondent no.1 continued to function as Sarpanch.

Against this order dated 24th May 1999 which was a composite order of rejecting the application of the petitioners for being joined as party in the appeal and granting of the order of status-quo in favour of the respondent no.1, the present petitioners preferred this Special Civil Application before this Court on 14th June 1999. On 23rd June 1999, this Court while issuing the Rule passed an order staying the operation of the order dated 24th May 1999 passed by the Additional Development Commissioner and on that basis, the respondent no.1 was asked to stop from functioning as the Sarpanch of the Gram Panchayat, Vasad and he ceased to function as such on the basis of this Court's order dated 23rd June 1999. It is clear that the main appeal is still pending before the Additional Development Commissioner. So far as the grievance of the petitioners with regard to joining them as party is concerned, the same is opposed by Mr.Mehta on the ground that they are not at all required to be joined as party and he has relied upon an unreported decision of this Court in Special Civil Application No.8947 of 1997 decided on 10th December 1997 (Sabir Husain Sarfuddin Kadri v. Meherunbibi Mahebubali Sayied). In the aforesaid case on which the reliance has been placed by Mr.Mehta, the persons who sought to be impleaded as party

were strangers and were not the members of the Panchayat whereas, the petitioners in this case are the members of the Panchayat. These petitioners had brought the allegations to the notice of the District Development Officer on the basis of which the order was passed against the respondent no.1 and they were also parties before the District Development Officer and, therefore, it cannot be said that they were not required to be heard in the appeal which was filed by the respondent no.1 before the Additional Development Commissioner. In the facts and circumstances of this case, the order dated 24th May 1999 by which the application of the petitioners for being joined as parties was rejected cannot be sustained in the eye of law. They deserve to be joined as parties in this appeal. Whereas they were required to be heard in the matter before passing the orders as parties to the appeal and while rejecting their application on 24th May 1999, the respondent no.1 was granted the order of status-quo, this Court finds that the Additional Development Commissioner may either dispose of the appeal itself finally within a period of one month from today and in case he finds that it is not possible for him to dispose of the appeal as a whole, he may take up matter to consider the the question of interim relief on the application of the respondent no.1 afresh after hearing the present petitioners also as parties in that appeal. He may pass appropriate orders in accordance with law on merits in this regard, either with regard to the question of interim relief or with regard to the main appeal as per his convenience, and in doing so, he shall not be influenced in any manner either by the earlier order passed by this Court on 23rd June 1999 or by anything said or observed in this order which is passed only for the purpose of deciding this Special Civil Application.

This Special Civil Application is decided and allowed in the terms as aforesaid and the impugned order is set aside as above. The petitioners shall be treated as parties to the appeal. Rule is made absolute in the terms as aforesaid. The parties are directed to appear before the Additional Development Commissioner on 22nd July 1999 as agreed and stated by both the parties and therefore, no notice will now be served upon any of the parties by the Additional Development Commissioner. No order as to costs. Direct service is permitted.

sreeram.